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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO
09/837,319	04/18/2001	Gary Stephen Shuster	409475-30	8357
	7590 08/02/2004		EXAM	INER
BRIAN M BERLINER, ESQ O'MELVENY & MYERS, LLP 400 SOUTH HOPE STREET			CHOUDHURY, AZIZUL Q	
			ART UNIT	PAPER NUMBER
LOS ANGELE	ES, CA 90071-2899	2143		

DATE MAILED: 08/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

		Application No.	Applicant(s)
		09/837,319	SHUSTER, GARY STEPHE
Office Action S	ummary	Examiner	Art Unit
		Azizul Choudhury	2143
The MAILING DATE of Period for Reply			vith the correspondence address
A SHORTENED STATUTOR THE MAILING DATE OF THI - Extensions of time may be available unafter SIX (6) MONTHS from the mailing If the period for reply specified above is if NO period for reply is specified above Failure to reply within the set or extend Any reply received by the Office later the earned patent term adjustment. See 3 Status 1) Responsive to communation of the set of the second of the se	S COMMUNICATION. Inder the provisions of 37 CFR 1.136 is generally supported by the provisions of 37 CFR 1.136 is generally supported by the period will be period for reply will, by statute, or the	(a). In no event, however, may a dithin the statutory minimum of the apply and will expire SIX (6) MO ause the application to become A ate of this communication, even in the application of the communication are of the communication, even in the application of the communication are of the communication and the communication are of the communicat	reply be timely filed irty (30) days will be considered timely. NTHS from the mailing date of this communication ABANDONED (35 U.S.C. § 133). If timely filed, may reduce any tters, prosecution as to the merits is
5) ☐ Claim(s) is/are a 6) ☑ Claim(s) <u>1-20</u> is/are rejo 7) ☐ Claim(s) is/are o	s) is/are withdrawn llowed. ected.		
Application Papers	joot to roomonom unitrol c	accuon requirement.	
Replacement drawing she	18 April 2000 is/are: a) \square that any objection to the dra et(s) including the correction	awing(s) be held in abeya n is required if the drawing	nce. See 37 CFR 1.85(a). g(s) is objected to. See 37 CFR 1.121(d)
	s objected to by the Exal	niner. Note the attache	d Office Action or form PTO-152.
Priority under 35 U.S.C. § 119			
2. Certified copies o3. Copies of the cert	None of: f the priority documents h f the priority documents h tified copies of the priority he International Bureau (F	nave been received. nave been received in A documents have been PCT Rule 17.2(a)).	Application No received in this National Stage
Attachment(s) 1) Notice of References Cited (PTO-89) 2) Notice of Draftsperson's Patent Drafts) Information Disclosure Statement(s) Paper No(s)/Mail Date	wing Review (PTO-948)	Paper No(Gummary (PTO-413) s)/Mail Date nformal Patent Application (PTO-152)
Patent and Trademark Office OL-326 (Rev. 1-04)	Office Action	n Summary	Part of Paper No./Mail Date 2

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Detailed Action

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase "inappropriate use" is considered broad. For instance, it is uncertain what qualifies as inappropriate and it is also uncertain how inappropriate use is determined. More detailed claim language is requested.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-20 are rejected under 35 U.S.C. 103(a) as obvious over Kalkunte et al (US Pat No: US005854900A), hereafter referred to as Kalkunte.

1. With regards to claims 1 and 11, Kalkunte teaches a method (a system is able to be a method), for operating a network server to discourage inappropriate use, wherein the server is connected to a plurality of client devices, and configured to transfer

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information between selected ones of the client devices and a memory for static storage of information, said method comprising the steps of: receiving a request to transfer a file between the memory and one of the plurality of client devices; removing a packet of information from the file after said receiving step, the packet of information comprising a defined number of information bits; transferring the packet of information between the memory and the one of the plurality of client devices after said removing step; pausing for a defined delay period after said transferring step; repeating said removing step, said transferring step, and said pausing step in order until all of the file has been transferred (The claimed steps are all known to occur in data transfers in networks. This is especially true for networks that use the TCP/IP protocol. Kalkunte teaches a network design that uses the TCP/IP protocol (column 9, line 43, Kalkunte). In addition, Kalkunte's design allows for the adding of delays to the transfer of packet).

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- 2. With regards to claims 2 and 12, Kalkunte teaches a method (a system is able to be a method), further comprising increasing the defined delay period after each execution of said pausing step (Kalkunte's design allows for delay periods, including defined delay periods as claimed (column 3, lines 9-61, Kalkunte)).
- 3. With regards to claim 3 and 13, Kalkunte teaches a method (a system is able to be a method), further comprising setting the defined delay period to a selected predetermined value after each execution of said pausing step (Kalkunte's design

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allows for delays to be set to a predetermined value as claimed (column 3, line 20, Kalkunte)).

- 4. With regards to claims 4 and 14, Kalkunte teaches a method (a system is able to be a method), further comprising initializing the defined delay period to a calculated value prior to said removing step (Kalkunte's design allows for the delay value to be set (column 3, lines 9-61, Kalkunte). No limitation is set as to where they delay must occur, it simply must occur so that the packet is delayed in its transmission).
- 5. With regards to claims 5 and 15, Kalkunte teaches a method (a system is able to be a method), further comprising initializing the defined delay period to a selected predetermined value prior to said removing step (Kalkunte's design allows for the delay value to be set (column 3, lines 9-61, Kalkunte). No limitation is set as to where they delay must occur, it simply must occur so that the packet is delayed in its transmission).
- 6. With regards to claims 6 and 16, Kalkunte teaches a method (a system is able to be a method), further comprising setting the defined delay period to a calculated value after each execution of said pausing step (Kalkunte's design allows for the delay value to be set (column 3, lines 9-61, Kalkunte). This includes setting the delay to a calculated value (column 3, lines 45-61, Kalkunte). No limitation is set as to where they delay must occur, it simply must occur so that the packet is delayed in its transmission).

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7. With regards to claims 7 and 17, Kalkunte teaches a method (a system is able to be a method), further comprising determining the calculated value from at least one input parameter selected from the file size, server load, network response time, and number of transfer requests from the client device within a defined prior period (Kalkunte's design allows for the delay value to be set (column 3, lines 9-61, Kalkunte). This includes setting the delay to a calculated value (column 3, lines 45-61, Kalkunte). Kalkunte's design also allows the calculations to be formulated using network factors, as claimed. No limitation is set as to where they delay must occur, it simply must occur so that the packet is delayed in its transmission).

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8. With regards to claims 8 and 18, Kalkunte teaches a method (a system is able to be a method), further comprising setting the defined number of information bits in the packet of information to a calculated value after each execution of said pausing step (Kalkunte's design allows for network data transfers using packets. Networks allow the size of the packets to be set as claimed. Kalkunte's design allows for the delay value to be set (column 3, lines 9-61, Kalkunte). This includes setting the delay to a calculated value (column 3, lines 45-61, Kalkunte). Kalkunte's design also allows the calculations to be formulated using network factors, such as packet size, as claimed. No limitation is set as to where they delay must occur, it simply must occur so that the packet is delayed in its transmission).

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9. With regards to claims 9 and 19, Kalkunte teaches a method (a system is able to be a method), further comprising setting the defined number of information bits in the packet of information to a selected predetermined value after each execution of said pausing step (Kalkunte's design allows for network data transfers using packets.

Networks allow the size of the packets to be set as claimed. Kalkunte's design allows for the delay value to be set (column 3, lines 9-61, Kalkunte). This includes setting the delay to a calculated value (column 3, lines 45-61, Kalkunte). Kalkunte's design also allows the calculations to be formulated using network factors, such as packet size, as claimed. No limitation is set as to where they delay must occur, it simply must occur so that the packet is delayed in its transmission).

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10. With regards to claims 10 and 20, Kalkunte teaches a method (a system is able to be a method), further comprising initializing the defined number of information bits in the packet of information prior to said removing step (Kalkunte's design allows for network data transfers using packets. Networks allow the size of the packets to be set as claimed. Kalkunte's design allows for the delay value to be set (column 3, lines 9-61, Kalkunte). This includes setting the delay to a calculated value (column 3, lines 45-61, Kalkunte). Kalkunte's design also allows the calculations to be formulated using network factors, such as packet size, as claimed. No limitation is set as to where they delay must occur, it simply must occur so that the packet is delayed in its transmission).

Remarks

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After careful review of the application, the examiner failed to note any truly unique traits within the design claimed. The claims provided are seen as being general and would benefit from the inclusion of more detailed specifications. In addition, should the applicants have any further details regarding their design that would present their design as being truly unique over the prior art provided by the examiner, they are encouraged to amend the specifications and claims to reflect such changes.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Azizul Choudhury whose telephone number is 703-305-7209. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley can be reached on 703-308-5221. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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AC

DAVID WILEY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100